

CLERK: 16 ayes, 4 nays Mr. President, on the motion to adopt the amendment to the amendment.

SPEAKER LUEDTKE: The amendment to the amendment is adopted. Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature. Senator Barnett and others who may not have been here yesterday, this provision in the statute as it exists now makes it a crime for a person to knowingly or intentionally deliver, distribute, or dispense a counterfeit narcotic substance. Now, here's where a problem arises, before I even get to the merits of the matter. It doesn't say knowingly and intentionally. It's a situation where a person may intentionally distribute a substance but not know that it is a counterfeit substance. If you have the counterfeit substance and you distribute it without knowing it, it is made a crime. So the intent here is to distribute the substance, but the intent is not to distribute a counterfeit substance. Since distribution of the counterfeit substance is the basis of the crime, the necessary intent would be lacking. I'm having handed out a paper today wherein I'm thanking Senator DeCamp for obtaining a decision from the Attorney General's office, an opinion relating to the matter of intent being required to have a crime. The Legislature can enact a piece of legislation declaring non-intentional conduct to be criminal. But the Supreme Court has said that if challenged by a person with standing, such an enactment would be ruled unconstitutional. In this provision, you do not make it necessary to have all of the elements of intent which would be necessary to constitute the crime. But aside from that, I think it's totally wrong to have this provision in statute which makes a mockery of the entire law. As has been pointed out or alluded to yesterday is really a truth in advertisement statute. It requires...I don't know what you would call it, somebody who wants to masquerade as a dope pusher, to actually push the dope or be guilty of a crime. So, if a junky makes a purchase from a reputed dope pusher and what he buys is not really dope, then based on this statute, the junky could go into court and bring a criminal action against the dope pusher for not selling him the dope that he promised to sell. This statute creates a cause of action for a junky against a dope pusher and the state is requiring the dope pusher to sell the dope or allow the junky to file a criminal complaint. Senator DeCamp, who is an attorney, and Senator Luedtke, who is an attorney, cannot deny what I'm saying. When you create a crime and a citizen is victimized by conduct that goes against that statute, that victim has a complaint. Now to show you another aspect of it. The crime that we're concerned about is dope pushing. This statute makes something which is not dope pushing a crime as if it were. The examples I gave yesterday to show what to me is the ridiculousness of it all, is if there is a law against selling liquor after hours or selling liquor to minors, there is no corollary which says, if you sell a substance reputed to be liquor but it is not liquor then that is a crime. If gambling is against the law, there is nothing that says that use of loaded dice or marked cards is a crime. What is being done here is what I consider to be an unconstitutional attempt to heap penalty upon penalty for non criminal activity. If those who are supporting this provision would tell the truth, it relates to instances where certain people who think they're very competent in this